

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 880

FINAL READING

Introduced by Rogert, 16; Stuthman, 22; Gloor, 35; Gay, 14.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248,  
3 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes  
4 of Nebraska; to provide and change testing requirements  
5 relating to the sale of consumer fireworks; to change  
6 license application provisions; to provide powers for  
7 the State Fire Marshal relating to licensure; to define  
8 and redefine terms; to eliminate provisions relating  
9 to common and permissible fireworks; to harmonize  
10 provisions; to provide an operative date; to repeal  
11 the original sections; and to outright repeal section  
12 28-1247, Reissue Revised Statutes of Nebraska.

13 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-1213, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1213 For purposes of sections 28-1213 to 28-1239,  
4 unless the context otherwise requires:

5           (1) Person means any individual, corporation, company,  
6 association, firm, partnership, limited liability company, society,  
7 or joint-stock company;

8           (2) Business enterprise means any corporation,  
9 partnership, limited liability company, company, or joint-stock  
10 company;

11           (3) Explosive materials means explosives, blasting  
12 agents, and detonators;

13           (4) Explosives means any chemical compound, mixture, or  
14 device, the primary or common purpose of which is to function by  
15 explosion, including, but not limited to, dynamite and other high  
16 explosives, black powder, pellet powder, initiating explosives,  
17 detonators, safety fuses, squibs, detonating cord, ignited cord,  
18 igniters, display fireworks as defined in section 28-1241, and  
19 firecrackers or devices containing more than one hundred thirty  
20 milligrams of explosive composition, but does not include ~~common~~  
21 consumer fireworks as defined in such section, gasoline, kerosene,  
22 naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed  
23 ammunition and primers for small arms, safety fuses, or matches;

24           (5) Blasting agent means any material or mixture,  
25 intended for blasting which meets the requirements of 49 C.F.R.

1 part 173, subpart C, Definitions, Classification and Packaging for  
2 Class I, as such subpart existed on ~~March 7, 2006,~~ January 1, 2010;

3 (6) Detonator means any device containing an initiating  
4 or primary explosive that is used for initiating detonation.  
5 Excluding ignition or delay charges, a detonator shall not contain  
6 more than ten grams of explosive material per unit. Detonator  
7 includes an electric detonator of instantaneous or delay type,  
8 a detonator for use with safety fuses, a detonating cord delay  
9 connector, and a nonelectric detonator of instantaneous or delay  
10 type which consists of detonating cord, shock tube, or any other  
11 replacement for electric leg wires;

12 (7) (a) Destructive devices means:

13 (i) Any explosive, incendiary, chemical or biological  
14 poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a  
15 propellant charge of more than four ounces, (D) missile having an  
16 explosive or incendiary charge of more than one-quarter ounce, (E)  
17 mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I)  
18 vessel or container intentionally caused to rupture or mechanically  
19 explode by expanding pressure from any gas, acid, dry ice, or other  
20 chemical mixture, or (J) any similar device, the primary or common  
21 purpose of which is to explode and to be used as a weapon against  
22 any person or property; or

23 (ii) Any combination of parts either designed or intended  
24 for use in converting any device into a destructive device as  
25 defined in subdivision (7) (a) (i) of this section from which a

1 destructive device may be readily assembled.

2 (b) The term destructive device does not include (i) any  
3 device which is neither designed nor redesigned for use as a weapon  
4 to be used against person or property, (ii) any device, although  
5 originally designed for use as a weapon, which is redesigned for  
6 use as a signaling, pyrotechnic, line-throwing, safety, or similar  
7 device, (iii) surplus ordnance sold, loaned, or given by the  
8 Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686,  
9 as such sections existed on March 7, 2006, (iv) any other device  
10 which the Nebraska State Patrol finds is not likely to be used  
11 as a weapon or is an antique, or (v) any other device possessed  
12 under circumstances negating an intent that the device be used as a  
13 weapon against any person or property;

14 (8) Federal permittee means any lawful user of explosive  
15 materials who has obtained a federal user permit under 18 U.S.C.  
16 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,  
17 2010;

18 (9) Federal licensee means any importer, manufacturer,  
19 or dealer in explosive materials who has obtained a federal  
20 importers', manufacturers', or dealers' license under 18 U.S.C.  
21 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,  
22 2010; and

23 (10) Smokeless propellants means solid propellants  
24 commonly called smokeless powders in the trade and used in small  
25 arms ammunition.

1           Sec. 2. Section 28-1239.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1239.01 (1) No person shall conduct a public  
4 exhibition or display of display fireworks without first procuring  
5 a display permit from the State Fire Marshal. If the applicant is  
6 an individual, the application for a display permit shall include  
7 the applicant's social security number. Such application for a  
8 display permit shall be accompanied by a fee of ten dollars to be  
9 deposited in the State Fire Marshal Cash Fund.

10           (2) No display fireworks shall be sold or delivered by  
11 a licensed distributor to any person who is not in possession of  
12 an approved display permit. Sales of display fireworks to persons  
13 without an approved display permit shall be subject to sections  
14 28-1213 to 28-1239.

15           Sec. 3. Section 28-1241, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           28-1241 As used in sections 28-1239.01 and 28-1241 to  
18 28-1252 and section 4 of this act, unless the context otherwise  
19 requires:

20           (1) Distributor means any person engaged in the business  
21 of making sales of fireworks at wholesale in this state to any  
22 person engaged in the business of making sales of fireworks either  
23 as a jobber or as a retailer or both;

24           (2) Jobber means any person engaged in the business of  
25 making sales of fireworks at wholesale to any other person engaged

1 in the business of making sales at retail;

2 (3) Retailer means any person engaged in the business of  
3 making sales of fireworks at retail to consumers or to persons  
4 other than distributors or jobbers;

5 (4) Sale includes barter, exchange, or gift or offer  
6 therefor and each such transaction made by any person, whether as  
7 principal, proprietor, agent, servant, or employee;

8 (5) Fireworks means any composition or device designed  
9 for the purpose of producing a visible or audible effect by  
10 combustion, deflagration, or detonation and which meets the  
11 definition of ~~common~~ consumer or special fireworks set forth by the  
12 United States Department of Transportation in Title 49 of the Code  
13 of Federal Regulations;

14 ~~(6) Common fireworks means any small firework device~~  
15 ~~designed to produce visible effects by combustion and which is~~  
16 ~~required to comply with the construction, chemical composition,~~  
17 ~~and labeling regulations of the United States Consumer Product~~  
18 ~~Safety Commission set forth in 16 C.F.R., small devices designed to~~  
19 ~~produce audible effects such as whistling devices, ground devices~~  
20 ~~containing fifty milligrams or less of explosive composition,~~  
21 ~~and aerial devices and firecrackers containing one hundred thirty~~  
22 ~~milligrams or less of explosive composition. Class C explosives as~~  
23 ~~classified by the United States Department of Transportation shall~~  
24 ~~be considered common fireworks;~~

25 ~~(7) Permissible~~ (6)(a) Consumer fireworks means ~~only~~

1 sparklers, vesuvius fountains, spray fountains, torches, color fire  
2 cones, star and comet type color aerial shells without explosive  
3 charge for the purpose of making a noise, lady fingers, not to  
4 exceed seven-eighths of an inch in length or one-eighth inch  
5 in diameter, total explosive composition not to exceed fifty  
6 milligrams in weight, color wheels, and any other fireworks  
7 approved under section 28-1247, and any of the following devices  
8 that (i) meet the requirements set forth in 16 C.F.R. parts 1500  
9 and 1507, as such regulations existed on January 1, 2010, and (ii)  
10 are tested and approved by a nationally recognized testing facility  
11 or by the State Fire Marshal:

12 (A) Any small firework device designed to produce visible  
13 effects by combustion and which is required to comply with the  
14 construction, chemical composition, and labeling regulations of the  
15 United States Consumer Product Safety Commission set forth in 16  
16 C.F.R., as such regulations existed on January 1, 2010;

17 (B) Any small device designed to produce audible effects  
18 such as a whistling device;

19 (C) Any ground device or firecracker containing fifty  
20 milligrams or less of explosive composition; or

21 (D) Any aerial device containing one hundred thirty  
22 milligrams or less of explosive composition.

23 (b) Class C explosives as classified by the United  
24 States Department of Transportation shall be considered consumer  
25 fireworks.

1           (c) Consumer fireworks does not include:

2           (i) Rockets that are mounted on a stick or wire and  
3 project into the air when ignited, with or without report;

4           (ii) Wire sparklers, except that silver and gold  
5 sparklers are deemed to be consumer fireworks until January 1,  
6 2014;

7           (iii) Nighttime parachutes;

8           (iv) Fireworks that are shot into the air and after  
9 coming to the ground cause automatic ignition due to sufficient  
10 temperature;

11           (v) Firecrackers that contain more than fifty milligrams  
12 of explosive composition; and

13           (vi) Fireworks that have been tested by the State Fire  
14 Marshal as a response to complaints and have been deemed to be  
15 unsafe; and

16           ~~(8)~~ (7) Display fireworks means those materials  
17 manufactured exclusively for use in public exhibitions or displays  
18 of fireworks designed to produce visible or audible effects  
19 by combustion, deflagration, or detonation. Display fireworks  
20 includes, but is not limited to, firecrackers containing more than  
21 one hundred thirty milligrams of explosive composition, aerial  
22 shells containing more than forty grams of explosive composition,  
23 and other display pieces which exceed the limits for classification  
24 as ~~common~~ consumer fireworks. Class B explosives, also known as  
25 1.3G explosives, as classified by the United States Department of

1 Transportation in 49 C.F.R. 172.101, as such regulation existed on  
2 January 1, 2010, shall be considered display fireworks. Display  
3 fireworks shall be considered an explosive as defined in section  
4 28-1213 and shall be subject to sections 28-1213 to 28-1239, except  
5 that display fireworks may be purchased, received, and discharged  
6 by the holder of an approved display permit issued pursuant to  
7 section 28-1239.01.

8           Sec. 4. (1) If the State Fire Marshal deems any fireworks  
9 item to be unsafe pursuant to subdivision (6)(c)(vi) of section  
10 28-1241, such fireworks item shall be quarantined from other  
11 fireworks. Any licensed distributor, jobber, or retailer may  
12 request, at the distributor's, jobber's, or retailer's expense,  
13 that such fireworks item be tested by an independent, nationally  
14 recognized testing facility to determine if such fireworks item  
15 meets the requirements set forth by the United States Consumer  
16 Product Safety Commission for consumer fireworks, also known as  
17 1.4G explosives, as classified by the United States Department of  
18 Transportation in 49 C.F.R. 172.101, as such regulation existed on  
19 January 1, 2010. A copy of the results of all testing done pursuant  
20 to this section shall be provided to the State Fire Marshal.

21           (2) If such fireworks item is in compliance with such  
22 requirements and otherwise permitted under section 28-1241, such  
23 fireworks item that was determined to be unsafe pursuant to  
24 subdivision (6)(c)(vi) of section 28-1241 shall be deemed a  
25 consumer firework and be permitted for retail sale or distribution.

1           (3) If such fireworks item is in compliance with such  
 2 requirements but is otherwise not deemed consumer fireworks, such  
 3 fireworks item shall not be sold at retail or distributed to  
 4 retailers for sale in this state, but a distributor, jobber, or  
 5 retailer may sell such fireworks item to another distributor or  
 6 retailer in a state that permits the sale of such fireworks item.

7           (4) If such fireworks item is not in compliance with  
 8 such requirements, then the distributor, jobber, or retailer shall  
 9 destroy such fireworks item under the supervision of the State  
 10 Fire Marshal. If such fireworks item is not destroyed under the  
 11 supervision of the State Fire Marshal, notarized documentation  
 12 shall be provided to the State Fire Marshal detailing and  
 13 confirming the fireworks item's destruction.

14           Sec. 5. Section 28-1244, Reissue Revised Statutes of  
 15 Nebraska, is amended to read:

16           28-1244 Except as provided in section 28-1245, it shall  
 17 be unlawful for any person to possess, sell, offer for sale, bring  
 18 into this state, or discharge any fireworks other than ~~permissible~~  
 19 consumer fireworks.

20           Sec. 6. Section 28-1246, Reissue Revised Statutes of  
 21 Nebraska, is amended to read:

22           28-1246 (1) It shall be unlawful for any person to  
 23 sell, hold for sale, or offer for sale as a distributor, jobber,  
 24 or retailer any fireworks in this state unless such person has  
 25 first obtained a license as a distributor, jobber, or retailer.

1 Application for each such license shall be made to the State  
2 Fire Marshal on forms prescribed by him or her. If the applicant  
3 is an individual, each application shall include the applicant's  
4 social security number. Each application shall be accompanied by  
5 the required fee, which shall be five hundred dollars for a  
6 distributor's license, two hundred dollars for a jobber's license,  
7 and twenty-five dollars for a retailer's license. ~~Each application~~  
8 ~~for a license as a retailer postmarked after June 10 shall be~~  
9 ~~accompanied by an additional fee of fifty dollars. All licenses~~  
10 Each application for a retailer's license shall be received by the  
11 State Fire Marshal at least ten business days prior to the sales  
12 period, as set forth in section 28-1249, in which the retailer  
13 wishes to sell consumer fireworks. A retailer's license shall be  
14 good only for the specific sales period listed on the application  
15 and within the calendar year in which issued. The retailer's  
16 license and shall at all times be displayed at the place of  
17 business of the holder thereof.

18 (2) The funds received pursuant to this section shall  
19 be remitted to the State Treasurer for credit to the State Fire  
20 Marshal Cash Fund.

21 Sec. 7. Section 28-1248, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-1248 (1) It shall be unlawful for any person not  
24 licensed as a distributor or as a jobber under ~~the provisions of~~  
25 sections 28-1241 to 28-1252 and section 4 of this act to bring any

1 fireworks into this state.

2 (2) It shall be unlawful for any retailer or jobber in  
3 this state to sell any fireworks in this state which have not  
4 been purchased from a distributor licensed under ~~the provisions of~~  
5 sections 28-1241 to 28-1252 and section 4 of this act.

6 (3) Any person licensed under ~~the provisions of~~ sections  
7 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act shall  
8 keep, available for inspection by the State Fire Marshal or his  
9 or her agents, a copy of each ~~inveice~~ packing list for fireworks  
10 purchased as long as any fireworks included on such ~~inveice~~ packing  
11 list are held in his or her possession. The packing list which  
12 ~~inveice~~ shall show the license number of the distributor or jobber  
13 from which the purchase was made.

14 Sec. 8. Section 28-1249, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 28-1249 It shall be unlawful to sell any ~~permissible~~  
17 consumer fireworks at retail within this state, outside the limits  
18 of any incorporated city or village. ~~Permissible~~ Consumer fireworks  
19 may be sold at retail only between June 24 and July 5 and between  
20 December 28 and January 1 of each year.

21 Sec. 9. Section 28-1250, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-1250 (1) Any person who violates any of the provisions  
24 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If  
25 such person is a licensed distributor or jobber, the State Fire

1 Marshal may suspend, cancel, or revoke the license for up to three  
2 years. The suspension, cancellation, or revocation shall become  
3 effective upon the failure to timely appeal the decision under the  
4 Administrative Procedure Act or upon an order of the Nebraska Fire  
5 Safety Appeals Board upholding the decision pursuant to a hearing  
6 under the Administrative Procedure Act. he or she shall be subject  
7 to the revocation of his or her license for a period of one year.

8 (2) It shall be unlawful for any person, association,  
9 partnership, limited liability company, or corporation to have in  
10 his, her, or its possession any fireworks in violation of any  
11 of the provisions of ~~such~~ sections 28-1244 to 28-1249. If any  
12 person shall have in his, her, or its possession any fireworks  
13 in violation of such sections, a warrant may be issued for the  
14 seizure of such fireworks and when the warrant is executed by the  
15 seizure of such fireworks, such fireworks shall be safely kept  
16 by the magistrate to be used as evidence. Upon conviction of the  
17 offender, the fireworks shall be destroyed, but if the offender is  
18 discharged, the fireworks shall be returned to the person in whose  
19 possession they were found. Nothing in such sections shall apply to  
20 the transportation of fireworks by regulated carriers.

21 Sec. 10. Section 28-1252, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-1252 The State Fire Marshal shall adopt and promulgate  
24 reasonable rules and regulations for the enforcement of sections  
25 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and,

1 together with all peace officers of the state and its political  
2 subdivisions, shall be charged with the enforcement of sections  
3 28-1239.01 and 28-1244 to ~~28-1249~~, 28-1252 and section 4 of this  
4 act.

5           Sec. 11. This act becomes operative on October 1, 2010.

6           Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241,  
7 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue  
8 Revised Statutes of Nebraska, are repealed.

9           Sec. 13. The following section is outright repealed:  
10 Section 28-1247, Reissue Revised Statutes of Nebraska.